



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: OCTOBER 13, 2022

IN THE MATTER OF:

Appeal Board No. 624488

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 624487, 624488 and 624489, the Board, on its own motion under Labor Law § 620 (3), has reopened the decisions of the Administrative

Law Judge filed, April 7, 2022, which (1) modified the initial determination holding the claimant ineligible to receive benefits, effective July 6, 2020, on the basis that the claimant was not available for employment, to be effective July 6 through September 20, 2020, and as so modified, sustained the initial determination; (2) modified the initial determination charging the claimant with an overpayment of \$10,584 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an overpayment of Federal

Pandemic Unemployment Compensation (FPUC) of \$9,600 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation (PEUC) of \$15,120 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Lost Wages Assistance benefits (LWA) of \$1,800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), in accordance with the decision and referred the amounts of the overpayments back to the Department of Labor for recalculation, and as so modified, sustained the initial determination; and (3) modified the initial determination and reducing the claimant's right to receive future benefits by 80 effective days and charging a civil penalty of \$5,295 on the basis that the claimant made willful misrepresentations to obtain benefits, in accordance with the decision and referred the amount of the forfeit and civil penalties back to the Department of Labor for recalculation, and as so modified,

sustained the initial determination

At the combined hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant worked for an automobile dealership as a repair technician when his employment ended under circumstances not at issue. He filed a claim for benefits, effective March 16, 2020. On and after July 6, 2020, he provided care to his children Mondays through Fridays. His wife worked remotely from home. He was available for employment from 4 pm to 1 am from Mondays through Fridays, and all day on Saturdays and Sundays. He was looking for work.

When he certified for benefits for the weeks at issue, he reported that there were zero days that he was not ready, willing and able to work. He received \$10,584 in regular benefits, \$9,600 in FPUC, \$15,120 in PEUC, and \$1,800 in LWA benefits.

**OPINION:** The credible evidence establishes that the claimant was available to work from 4 pm to 1 am from Mondays through Fridays, and all day on the weekends. The record contains no evidence that the claimant was ever advised by the Department of Labor that he would be considered unavailable to work and ineligible for benefits if he was not available to work full time and restricted his availability to work around his childcare hours (See Field Memorandum 1-2000). As the claimant was not so advised, he was not provided with an opportunity to adjust his availability for employment during the period at issue (See Appeal Board No. 625376). A claimant is not responsible for failing to conform to a standard or rule of which he was not informed. This case is similar to Appeal Board No. 590141, where the Board found that the claimant was available to work notwithstanding that he provided care to his grandparents from 5:30 am to 3:30 pm, Mondays through Fridays. In addition, there is no requirement that a claimant be available to work for a specific employer and the fact that a claimant does not remain in contact with a base period employer does not render a claimant unavailable for employment (See Appeal Board No. 547261). Accordingly, we conclude that the claimant was available for work during the period at issue. As the claimant was not subject to the ineligibility determination, he was not overpaid the regular and

federal benefits. We further conclude that his certifications of being ready willing and able to work were not false statements and were not willful misrepresentations to obtain benefits.

DECISION: The decisions of the Administrative Law Judge are reversed.

In Appeal Board Nos. 624487, 624488 and 624489, the initial determinations, holding the claimant ineligible to receive benefits, effective July 6, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$9,600 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$15,120 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Lost Wages Assistance benefits of \$1,800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 80 effective days and charging a civil penalty of \$5,295 on the basis that the claimant made willful misrepresentations to obtain benefits, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER